

## **RULE PROPOSAL**

### **HEALTH AND SENIOR SERVICES**

#### **DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT**

#### **SENIOR GOLD PRESCRIPTION PROGRAM MANUAL**

#### **INCOME STANDARDS**

**Proposed Amendments:** N.J.A.C. 8:83D-2.1 and 6.2

**Proposed New Rule:** N.J.A.C. 8:83D-2.2

**Authorized By:** Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services.

**Authority:** N.J.S.A. 30:4D-43 et seq.

**Calendar Reference:** See Summary below for explanation of exception to calendar requirement.

**Proposal Number:** PRN 2004-155.

Submit written comments by June 18, 2004 to:

Kathleen Mason, Assistant Commissioner  
Division of Senior Benefits and Utilization Management  
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A copy of the proposal is available for review at all offices of the Area Agencies on Aging, which are situated in all 21 counties.

The agency proposal follows:

#### **Summary**

The Senior Gold Prescription Discount Program was created as a result of the signing of the Senior Gold Prescription Discount Act, P.L. 2001, c.96, on May 15, 2001. The purpose of the Senior Gold Program is to provide prescription discounts for certain elderly and disabled New Jersey residents who do not qualify for prescription benefits through the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program because they have a higher income. Seniors must be at least 65 years of age and disabled persons must be at least 18 years of age and receiving Social Security

disability benefits to qualify. Senior Gold beneficiaries must pay a \$15.00 copayment for each prescription plus 50 percent of the remaining cost of the prescription. Once a Senior Gold beneficiary reaches annual out-of-pocket expenses exceeding \$2,000 for single persons and \$3,000 a year for married couples, they will pay only the \$15.00 copayment for each prescription.

The Commissioner of the Department of Health and Senior Services, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., is responsible for adopting rules and regulations for the Senior Gold Program. The Division of Senior Benefits and Utilization Management, Department of Health and Senior Services, is the agency responsible for the operation and administration of the Senior Gold Program.

At N.J.A.C. 8:83D-2.1, the Division has amended the definition section, adding definitions for "special needs trust" and "viatical settlement." N.J.A.C. 8:83D-2.2 has been added to provide provisions of a "special needs trust." N.J.A.C. 8:83D-6.2 has also been amended to include other sources of income that are includable and excludable in determining eligibility for the Senior Gold program. The Department notes that amendments to N.J.A.C. 8:83D-6.2(a) and (b) concerning income amounts, and the subsection (m) concerning the form of notice of changes to those amounts, were proposed on January 20, 2004 at 36 N.J.R. 275(a).

Under includable income, the following changes have been made: death benefits were added with bequests, Black Lung benefits were added with pension benefits, and benefit payments from foreign countries and rental income--net after expenses are also included.

Income that has been added to excludable income are Holocaust reparations, proceeds from viatical settlements and special needs trusts, rollovers from one financial instrument to another, 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies and demutualization.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The Senior Gold program provides assistance to elderly and disabled individuals who do not qualify for PAAD, but continue to need help in meeting the costs of prescriptions for medications and certain prescribed supplies. Those individuals who are eligible for Senior Gold benefits will be more likely to fill their prescriptions and should experience better health, a longer life, and a better quality of life. The proposed amendments and new rule serve to continue the positive impact of these rules.

### **Economic Impact**

DHSS believes that, because the current rules regarding the Senior Gold program provide economic assistance to eligible individuals for the purchase of their needed medications, the proposed amendments and new rule will continue that positive economic impact.

### **Federal Standards Statement**

The Senior Gold program is completely State-funded. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

DHSS anticipates that the proposed amendments and new rule will have no impact on jobs. There should be no jobs impact on pharmaceutical providers because there is no change in coverage or payment for pharmaceuticals. The proposed amendments and new rule will not result in the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendments and new rule will have no impact on the agriculture industry in the State of New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments and new rule do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In general, the requirements for pharmacies that want to participate in Senior Gold are set forth at N.J.A.C. 8:33E. Pharmacies are still required to operate under a valid retail and/or institutional permit issued by the Board of Pharmacy of the State of New Jersey. Out-of-State pharmacies are not allowed to participate in the Senior Gold program. Pharmacies are still required to file an application and agreement of participation. The Senior Gold program requires that all drugs be prescribed by licensed practitioners within the scope of their practice and dispensed by licensed pharmacists pursuant to the rules promulgated by the New Jersey State Board of Pharmacy, N.J.A.C. 13:39. There are no capital costs associated with the proposed amendments and new rule. These rules are designed to minimize any adverse economic impact on small businesses because there is no change in the existing requirements for dispensing prescribed drugs in the proposed amendments and new rule.

## **Smart Growth Impact**

The proposed amendments and new rule will have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### **8:83D-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

**"Special needs trust" means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 8:83D-2.2 for provisions).**

**"Viatical settlement" means the sale or cashing in of a life insurance policy prior to the death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.**

### **8:83D-2.2 Special needs trust**

**(a) To be considered a special needs trust, the trust shall include the following provisions:**

- 1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary;**
- 2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;**
- 3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established;**
- 4. The trust shall specifically identify, in an attached schedule the source of the initial trust property and all assets of the trust;**
- 5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits;**

6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court;
7. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke, or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime;
8. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve. The Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee;
9. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power;
10. The trust shall specifically state that the trustee shall be compensated only as provided by law (N.J.S.A. 3B:18-2 et seq.). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law;
11. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis;
12. The State shall be given advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures; and
13. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

## 8:83D-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a total income between \$20,016 and \$30,016 in 2003 to be eligible for Senior Gold benefits. These income limits will increase January 1 of each year in accordance with the Social Security cost-of-living [increase] **adjustment**.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) total annual income between \$24,542 and \$34,542 in 2003 to be eligible for Senior Gold benefits. The income limits will increase January 1 of each year in accordance with the Social Security cost-of-living [increase] **adjustment**.

1. An applicant and spouse shall be considered separated and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.
  - i. Any support payment received by the applicant **for the sole benefit of the applicant** shall be considered as income for Senior Gold eligibility purposes.
2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.
  - i. The Program shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for Senior Gold (for example, when the income of an applicant and his institutionalized spouse is combined at [\$35,000] **\$36,000**, the applicant is ineligible for Senior Gold, but if the applicant and spouse are considered separated, the applicant could become eligible for Senior Gold under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard for PAAD).

(c) All income, from whatever source derived, is considered in determining eligibility for the Program. Jointly owned income sources will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:

- i.-xii. (No change.)
  - xiii. Bequests **and death benefits**;
  - xiv-xv. (No change.)
  - xvi. Pensions **and black lung benefits**;
  - xvii. (No change.)
  - xviii. Retirement benefits including distribution from [ALL] Individual Retirement Arrangements **(IRAs)** (Traditional, Simple, Roth or Educational [IRA's]) **and benefit payments from foreign countries**;
  - xix. (No change.)
  - xx. Fair market value of prizes and awards; [and]
  - xxi. Gambling and lottery winnings; **and**
  - xxii. Rental income (net after expenses).**
2. Sources of income which are excluded in considering eligibility for Senior Gold are as follows:
- i. **Benefit amounts received under the New Jersey State** Lifeline Credit Program/Tenants Lifeline Assistance Program;
  - ii.-iv. (No change.)
  - v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs [and], Workforce 55+ program and **programs under Title V of the Older Americans Act of 1965**;
  - vi. (No change.)
  - vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5; [and]
  - viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4[.] ;
  - ix. Holocaust reparations;**
  - x. Proceeds from viatical settlements;**
  - xi. Proceeds received by the beneficiary of a special needs trust (see N.J.A.C. 8:83-2.2 for provisions);**
  - xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;**

- xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and**
- xiv. An insurance policyholder's original contributions if demutualization of the policy occurs (in that case, only the earnings of the policy would be counted).**

(d)-(m) (No change.)